

House Bill 447 (COMMITTEE SUBSTITUTE)

By: Representative O'Neal of the 146<sup>th</sup>

A BILL TO BE ENTITLED

AN ACT

To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, so as to provide for conformity with the federal treatment of dividends received from real estate investment trusts and regulated investment companies; to provide for definitions; to disallow expenses paid to certain real estate investment trusts; to provide an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended in subsection (b) of Code Section 48-7-21, relating to taxation of corporations, by revising paragraph (8) and adding two new paragraphs to read as follows:

"(8) There shall be subtracted from taxable income dividends received by:

(A) A corporation from sources outside the United States as defined in the Internal Revenue Code of 1986. For purposes of this subparagraph, dividends received by a corporation from sources outside of the United States shall include amounts treated as a dividend and income deemed to have been received under provisions of the Internal Revenue Code of 1986 by such corporation if such amounts could have been subtracted from taxable income under this paragraph, had such amounts actually been received. Amounts to be subtracted under this subparagraph shall include the following, as defined by the Internal Revenue Code of 1986:

(i) Qualified electing fund income;

(ii) Subpart F income; and

(iii) Income attributable to an increase in United States property by a controlled foreign corporation.

The amount subtracted under this subparagraph shall be reduced by any expenses directly attributable to the dividend income; and

(B) Corporations from affiliated corporations within the United States, when the corporation receiving the dividends is engaged in business in this state and is subject

1 to the payment of taxes under the income tax laws of this state, to the extent that the  
2 dividends have been included in net income under this Code section. Dividends from  
3 affiliates shall be reduced by any expenses directly attributable to the dividend income.  
4 Dividends received directly or indirectly from a real estate investment trust, as defined  
5 and provided for in sections 856 through 859 of the Internal Revenue Code of 1986, or  
6 from a regulated investment company, as defined and provided for in sections 851  
7 through 855 of the Internal Revenue Code of 1986, shall not be included as part of any  
8 dividends received deduction otherwise available under this Code section."

9 "(15) There shall be added to taxable income any amount deducted in arriving at federal  
10 taxable income under the Internal Revenue Code of 1986 to the extent such deduction is  
11 attributable to a dividend received directly or indirectly from a real estate investment  
12 trust, as defined and provided for in sections 856 through 859 of the Internal Revenue  
13 Code of 1986, or from a regulated investment company, as defined and provided for in  
14 sections 851 through 855 of the Internal Revenue Code of 1986. The commissioner is  
15 authorized to prescribe forms and promulgate rules and regulations deemed necessary in  
16 order to effectuate this paragraph.

17 (16) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.4."

## 18 SECTION 2.

19 Said article is further amended in subsection (b) of Code Section 48-7-27, relating to  
20 computation of taxable net income, by adding a new paragraph to read as follows:

21 "(12) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.4."

## 22 SECTION 3.

23 Said article is further amended by adding a new Code section to read as follows:

24 "48-7-28.4.

25 (a) As used in this Code section, the term:

26 (1) 'Captive real estate investment trust' means any real estate investment trust, unless  
27 the real estate investment trust is either:

28 (A) A publicly traded real estate investment trust; or

29 (B) A qualified real estate investment trust as defined in this Code section.

30 (2) 'Dividends paid deduction' means the deduction for dividends paid which is allowed  
31 pursuant to Sections 561 through 565 and Sections 856 through 859 of the Internal  
32 Revenue Code of 1986.

33 (3) 'Qualified real estate investment trust' means any real estate investment trust other  
34 than a real estate investment trust of which more than fifty percent of the voting power

1 or value of the beneficial interests or shares are owned or controlled, directly or indirectly  
2 through one or more related members, by a single entity, which single entity is also:

3 (A) Subject to the provisions of Subchapter C of Chapter 1 of Subtitle A of the Internal  
4 Revenue Code of 1986 and not exempt from federal income tax pursuant to the  
5 provisions of Section 501 of the Internal Revenue Code of 1986; and

6 (B) Not a real estate investment trust as defined in this Code section or a qualified real  
7 estate investment trust subsidiary as defined under Section 856(i) of the Internal  
8 Revenue Code of 1986.

9 (4) 'Real estate investment trust' means an entity that has elected such status and meets  
10 the requirements of Section 856 of the Internal Revenue Code of 1986.

11 (5) 'Related member' means the same as is defined in Code Section 48-7-28.3.

12 (b) For purposes of computing its Georgia taxable net income under Code Sections  
13 48-7-21 and 48-7-27, a taxpayer shall add back all expenses and costs directly or indirectly  
14 paid, accrued, or incurred to a captive real estate investment trust. Such expenses and costs  
15 shall be added before the income is apportioned or allocated as provided by Code Section  
16 48-7-31.

17 (c) The commissioner shall have the authority to reverse in whole or in part the  
18 adjustments required in subsection (b) of this Code section when the taxpayer and the  
19 commissioner agree in writing to the application or use of an alternative method of  
20 apportionment under subparagraph (d)(2)(E) of Code Section 48-7-31, Code Section  
21 48-7-31.1, or Code Section 48-7-35. Nothing in this Code section shall be construed to  
22 limit or negate the commissioner's authority otherwise to enter into agreements and  
23 compromises otherwise allowed by law.

24 (d)(1) For purposes of this subsection, the term:

25 (A) 'Allocated or apportioned, or both' shall not mean the amount of income that is  
26 subject to allocation or apportionment, or both. Rather, it means the amount that is  
27 arrived at after applying the allocation and apportionment rules of a state as defined in  
28 subparagraph (B) of this paragraph. A tax or the portion of a tax, which is or would be  
29 imposed regardless of the amount of the income, shall not be considered to be a tax on  
30 or measured by the income of the captive real estate investment trust, a related member,  
31 or the taxpayer.

32 (B) 'State' means a state in the United States of America, including the District of  
33 Columbia, but does not include those states under whose laws the taxpayer files with  
34 the captive real estate investment trust or a related member, or the captive real estate  
35 investment trust files with another related member, a combined income tax report or  
36 return, a consolidated income tax report or return, or any other report or return where  
37 such report or return is due because of the imposition of a tax on, or measured by,

1 income and where such combined income tax report or return, consolidated income tax  
2 report or return, or other report or return results in the elimination of the tax effects  
3 from transactions directly or indirectly between the taxpayer and the captive real estate  
4 investment trust or a related member.

5 (2) The amount of the adjustment required by subsection (b) of this Code section shall  
6 be reduced, but not below zero, to the extent the corresponding expenses and costs are  
7 received as income in an arm's length transaction by the captive real estate investment  
8 trust and:

9 (A) To the extent such income is not reduced by the dividends paid deduction, and to  
10 the extent such income is allocated or apportioned, or both, to and taxed by Georgia or  
11 another state that imposes a tax on or measured by the income of the captive real estate  
12 investment trust; or

13 (B) To the extent the dividend deriving from such income, paid directly or indirectly  
14 by the captive real estate investment trust to the taxpayer or a related member, is  
15 allocated or apportioned, or both, to and taxed by Georgia or another state that imposes  
16 a tax on or measured by the income of the taxpayer or such related member.

17 (3) In claiming the exception allowed by this subsection, the taxpayer shall disclose on  
18 such taxpayer's return, with respect to the captive real estate investment trust or the  
19 related member, the name, the federal identification number, the name of each state, the  
20 amount of the expenses and costs allocated or apportioned to and taxed by each state, and  
21 such other information as the commissioner may prescribe.

22 (e) Nothing in this Code section shall require a taxpayer to add to such taxpayer's Georgia  
23 taxable net income more than once any amount of expenses and costs that the taxpayer  
24 pays, accrues, or incurs to a captive real estate investment trust.

25 (f) Nothing in this Code section shall be construed to limit or negate the commissioner's  
26 authority to make adjustments under Code Section 48-7-58.

27 (g) The adjustment required by this Code section shall apply to a corporation that files a  
28 separate return with Georgia and to the separate taxable income computation of each  
29 member of a Georgia consolidated return.

30 (h) In addition to other penalties imposed by this title, the penalty for failure to make the  
31 adjustment required by this Code section shall be 10 percent of the additional tax that  
32 results because of this Code section. The commissioner may waive this penalty pursuant  
33 to the provisions of Code Section 48-2-43.

34 (i) The commissioner is authorized to prescribe forms and promulgate rules and  
35 regulations deemed necessary in order to effectuate this Code section."

**SECTION 4.**

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2 This Act shall become effective upon this Act's approval by the Governor or upon its  
3 becoming law without such approval and shall be applicable to all taxable years beginning  
4 on or after January 1, 2008.

**SECTION 5.**

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6 All laws and parts of laws in conflict with this Act are repealed.